

Bureau of Industry and Security, Commerce

§ 717.2

Part C. Other Arrangements.

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated: _____

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date: _____

Plant site: _____

Inspection number: _____

Category of amenities requested: _____

Description of amenities requested: _____

Approval of the request by the inspected State Party: _____

Comments on the request by the inspected State Party: _____

Indication of the costs for the amenities requested: _____

Certification of the authorized member of the inspection team that the requested amenities have been provided: _____

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided: _____

Name and signature of the authorized member of the inspection team: _____

Name and signature of the representative of the inspected State Party: _____

ATTACHMENT 12—AGREED PROCEDURES FOR CONDUCTING INTERVIEWS

ATTACHMENT 13—AGREED PROCEDURES FOR PHOTOGRAPHY

ANNEXES

NOTE: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy

Annex 2: Organization's Health and Safety Policy and Regulations

Annex 3: Organization's Policy on Confidentiality

Annex 4: Plant Site Declaration

Annex 5: Preliminary and Final Inspection Report Formats

Annex 6: Inspected State Party's Procedures for Inspection Notification

Annex 7: Inspected State Party's Procedures for Information Control

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.

717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

717.2 Challenge inspections.

717.3 Samples.

717.4 Report of inspection-related costs.

AUTHORITY: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73801, Dec. 30, 1999, unless otherwise noted.

§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. If States Parties are unable to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW), a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWC (parts 710 through 722 of this subchapter) must, within five working days, provide information required by the Department of Commerce pursuant to an Article IX clarification request from another State Party, or the OPCW, concerning possible non-compliance with the reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716 of this subchapter.

§ 717.2 Challenge inspections.

Any person or facility subject to the CWC (see § 710.2 of this subchapter), whether or not required to submit declarations or reports, may be subject to a challenge inspection by the OPCW

concerning possible non-compliance with the requirements of the Convention. The Department of Commerce will host and escort the international Inspection Team for all challenge inspections of persons or facilities subject to the CWC concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter.

(a) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, the Department of Commerce will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact if such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, another appropriate agency, may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or locations for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection;

(D) The names and titles of the inspectors; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification to the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections.*

(1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. A challenge inspection will also be conducted in accordance with a facility agreement, if a facility agreement has been concluded for the subject facility, to the extent the terms of the facility agreement are relevant to the challenge inspection request.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

§ 717.3 Samples.

The owner, operator, occupant or agent in charge of a facility or location must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation:

“ATTN: Report of Inspection-related Costs.”

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.

718.1 Definition.

718.2 Identification of confidential business information.

718.3 Disclosure of confidential business information.

SUPPLEMENT No. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73802, Dec. 30, 1999, unless otherwise noted.

§ 718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 (“the Act”) defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

- (a) Financial data;
- (b) Sales and marketing data (other than shipment data);
- (c) Pricing data;
- (d) Personnel data;
- (e) Research data;
- (f) Patent data;
- (g) Data maintained for compliance with environmental or occupational health and safety regulations;
- (h) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;
- (i) Any chemical structure;
- (j) Any plant design, process, technology or operating method;
- (k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;
- (l) Any commercial sale, shipment or use of a chemical; or
- (m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

§ 718.2 Identification of confidential business information.

- (a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need